

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

3

HOUSE BILL 320
Committee Substitute Favorable 5/14/13
Third Edition Engrossed 5/15/13

Short Title: Medicaid Managed Care/Behavioral Health Svcs.

(Public)

Sponsors:

Referred to:

March 18, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH STANDARDS FOR MEDICAID MANAGED CARE FOR
3 BEHAVIORAL HEALTH SERVICES UNDER THE 1915(B)/(C) MEDICAID WAIVER,
4 INCLUDING THE ESTABLISHMENT OF GRIEVANCE AND APPEAL
5 PROCEDURES FOR ENROLLEES.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

8 "Chapter 108D.

9 "Medicaid Managed Care for Behavioral Health Services.

10 "Article 1.

11 "General Provisions.

12 "§ 108D-1. Definitions.

13 The following definitions apply in this Chapter, unless the context clearly requires
14 otherwise:

- 15 (1) Applicant. – A provider of MH/IDD/SA who is seeking to participate in the
16 closed network of one or more LME/MCOs.
- 17 (2) Closed network. – The network of providers who have contracted with an
18 LME/MCO to furnish MH/IDD/SA services to enrollees.
- 19 (3) Contested case hearing. – The hearing or hearings conducted at OAH
20 pursuant to G.S. 108D-29 to resolve a dispute between an enrollee and an
21 LME/MCO about a managed care action.
- 22 (4) Department. – The North Carolina Department of Health and Human
23 Services.
- 24 (5) Emergency medical condition. – As defined in 42 C.F.R. § 438.114.
- 25 (6) Emergency services. – As defined in 42 C.F.R. § 438.114.
- 26 (7) Enrollee. – A Medicaid beneficiary who is currently enrolled in an MCO or
27 PIHP operated by an LME/MCO.
- 28 (8) Local Management Entity or LME. – As defined in G.S. 122C-3(20b).
- 29 (9) Local Management Entity/Managed Care Organization or LME/MCO. – An
30 LME that has been approved by the Department to operate an MCO or PIHP
31 in accordance with 42 C.F.R. Part 438.
- 32 (10) Managed care action. – An action, as defined in 42 C.F.R. § 438.400(b).
- 33 (11) Managed Care Organization or MCO. – As defined in 42 C.F.R. § 438.2.
- 34 (12) MH/IDD/SA. – Those mental health, intellectual or developmental
35 disabilities, and substance abuse services covered under a contract in effect



* H 3 2 0 - V - 3 *

1 between the Department and an LME to operate an MCO or PIHP under the
2 1915(b)/(c) Medicaid Waivers approved by the federal Centers for Medicare
3 and Medicaid Services (CMS).

4 (13) Network Provider. – An appropriately credentialed provider of MH/IDD/SA
5 services who has entered into a contract for participation in the closed
6 network of one or more LME/MCOs. The term also includes a provider of
7 emergency services.

8 (14) Notice of managed care action. – The notice required by 42 C.F.R. §
9 438.404.

10 (15) Notice of resolution. – The notice described in 42 C.F.R. § 438.408(e).

11 (16) OAH. – The North Carolina Office of Administrative Hearings.

12 (17) Prepaid Inpatient Health Plan or PIHP. – As defined in 42 C.F.R. § 438.2.

13 (18) Provider of emergency services. – A provider that is qualified to furnish
14 emergency services to evaluate or stabilize an enrollee's emergency medical
15 condition.

16 **"§ 108D-2. Scope; applicability of this Chapter.**

17 This Chapter applies to every LME/MCO and to every applicant, enrollee, provider of
18 emergency services, and network provider of an LME/MCO.

19 **"§ 108D-3. Conflicts; severability.**

20 (a) To the extent that this Chapter conflicts with the Social Security Act or 42 C.F.R.
21 Part 438, federal law prevails to the extent of the conflict.

22 (b) To the extent that this Chapter conflicts with any other provision of State law that is
23 contrary to the principles of managed care that will ensure successful containment of costs for
24 behavioral health care services, this Chapter prevails and applies.

25 (c) If any section, term, or provision of this Chapter is adjudged invalid for any reason,
26 these judgments shall not affect, impair, or invalidate any other section, term, or provision of
27 this Chapter, but the remaining sections, terms, and provisions shall be and remain in full force
28 and effect.

29 "Article 2.

30 "Enrollee Grievances and Appeals.

31 **"§ 108D-25. LME/MCO grievance and appeal procedures, generally.**

32 (a) Each LME/MCO shall establish and maintain internal grievance and appeal
33 procedures that (i) comply with the Social Security Act and 42 C.F.R. Part 438, Subpart F, and
34 (ii) afford enrollees, and providers authorized in writing to act on behalf of enrollees,
35 constitutional rights to due process and a fair hearing.

36 (b) Enrollees, or providers authorized in writing to act on behalf of enrollees, may file
37 requests for grievances and LME/MCO level appeals orally or in writing. However, unless the
38 enrollee or provider requests an expedited appeal, the oral filing must be followed by a written,
39 signed grievance or appeal.

40 (c) An LME/MCO shall not attempt to influence, limit, or interfere with an enrollee's
41 right or decision to file a grievance, request for an LME/MCO level appeal, or a contested case
42 hearing. However, nothing in this Chapter shall be construed to prevent an LME/MCO from
43 doing any of the following:

44 (1) Offering an enrollee alternative services.

45 (2) Engaging in clinical or educational discussions with enrollees or providers.

46 (3) Engaging in informal attempts to resolve enrollee concerns prior to the
47 issuance of a notice of grievance disposition or notice of resolution.

48 (d) An LME/MCO shall not take punitive action against a provider for any of the
49 following:

50 (1) Filing a grievance on behalf of an enrollee or supporting an enrollee's
51 grievance.

- 1 (2) Requesting an LME/MCO level appeal on behalf of an enrollee or
2 supporting an enrollee's request for an LME/MCO level appeal.
3 (3) Requesting an expedited LME/MCO level appeal on behalf of an enrollee or
4 supporting an enrollee's request for an LME/MCO level expedited appeal.
5 (4) Requesting a contested case hearing on behalf of an enrollee or supporting
6 an enrollee's request for a contested case hearing.

7 **"§ 108D-26. LME/MCO grievances.**

8 (a) Filing of Grievance. – An enrollee, or a provider authorized in writing to act on
9 behalf of an enrollee, has the right to file a grievance with an LME/MCO at any time to express
10 dissatisfaction about any matter other than a managed care action. Upon receipt of a grievance,
11 an LME/MCO shall acknowledge receipt of the grievance in writing by United States mail.

12 (b) Notice of Grievance Disposition. – The LME/MCO shall resolve the grievance as
13 expeditiously as the enrollee's health condition requires, but no later than 90 days after receipt
14 of the grievance. The LME/MCO shall provide the enrollee and all other affected parties with
15 written notice of the grievance disposition by United States mail within this 90-day period.

16 (c) Right to LME/MCO Level Appeal. – There is no right to appeal the resolution of a
17 grievance to OAH or any other forum.

18 **"§ 108D-27. Standard LME/MCO level appeals.**

19 (a) Notice of Managed Care Action. – An LME/MCO shall provide an enrollee with
20 written notice of a managed care action by United States mail in a manner consistent with 42
21 C.F.R. Part 438, Subpart F.

22 (b) Request for Appeal. – An enrollee, or a provider authorized in writing to act on
23 behalf of the enrollee, has the right to file a request for an LME/MCO level appeal of a
24 grievance disposition or a notice of managed care action no later than 30 days after the mailing
25 date of the grievance disposition or notice of managed care action. Upon receipt of a request for
26 an LME/MCO level appeal, an LME/MCO shall acknowledge receipt of the request for appeal
27 in writing by United States mail.

28 (c) Continuation of Benefits. – An LME/MCO shall continue the enrollee's benefits
29 during the pendency of an LME/MCO level appeal to the same extent required under 42 C.F.R.
30 § 438.420.

31 (d) Notice of Resolution. – The LME/MCO shall resolve the appeal as expeditiously as
32 the enrollee's health condition requires, but no later than 45 days after receiving the request for
33 appeal. The LME/MCO shall provide the enrollee and all other affected parties with a written
34 notice of resolution by United States mail within this 45-day period.

35 (e) Right to Request Contested Case Hearing. – An enrollee, or a provider authorized in
36 writing to act on behalf of an enrollee, may file a request for a contested case hearing pursuant
37 to G.S. 108D-29 as long as the enrollee or provider has exhausted the appeal procedures
38 described in this section or G.S. 108D-28.

39 (f) Request Form for Contested Case Hearing. – In the same mailing as the notice of
40 resolution, the LME/MCO shall also provide the enrollee with an appeal request form for a
41 contested case hearing that meets the requirements of G.S. 108D-29(e).

42 **"§ 108D-28. Expedited LME/MCO level appeals.**

43 (a) Request for Expedited Appeal. – When the time limits for completing a standard
44 appeal could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or
45 regain maximum function, an enrollee, or a provider authorized in writing to act on behalf of an
46 enrollee, has the right to file a request for an expedited appeal of a managed care action no later
47 than 30 days after the mailing date of the notice of managed care action. For expedited appeal
48 requests made by enrollees, the LME/MCO shall determine if the enrollee qualifies for an
49 expedited appeal. For expedited appeal requests made by providers on behalf of enrollees, the
50 LME/MCO shall presume an expedited appeal is necessary.

1 **(b) Notice of Denial for Expedited Appeal.** – If the LME/MCO denies a request for an
2 expedited LME/MCO level appeal, the LME/MCO shall make reasonable efforts to give the
3 enrollee and all other affected parties oral notice of the denial and follow up with written notice
4 of denial by United States mail by no later than two calendar days after receiving the request
5 for an expedited appeal. In addition, the LME/MCO shall resolve the appeal within the time
6 limits established for standard LME/MCO level appeals in G.S. 108D-27.

7 **(c) Continuation of Benefits.** – An LME/MCO shall continue the enrollee's benefits
8 during the pendency of an expedited LME/MCO level appeal to the extent required under 42
9 C.F.R. § 438.420.

10 **(d) Notice of Resolution.** – If the LME/MCO grants a request for an expedited
11 LME/MCO level appeal, the LME/MCO shall resolve the appeal as expeditiously as the
12 enrollee's health condition requires, and no later than three working days after receiving the
13 request for an expedited appeal. The LME/MCO shall provide the enrollee and all other
14 affected parties with a written notice of resolution by United States mail within this three-day
15 period.

16 **(e) Right to Request Contested Case Hearing.** – An enrollee, or a provider authorized in
17 writing to act on behalf of an enrollee, may file a request for a contested case hearing pursuant
18 to G.S. 108D-29 as long as the enrollee or provider has exhausted the appeal procedures
19 described in G.S. 108D-27 or this section.

20 **(f) Request Form for Contested Case Hearing.** – In the same mailing as the notice of
21 resolution, the LME/MCO shall also provide the enrollee with an appeal request form for a
22 contested case hearing that meets the requirements of G.S. 108D-29(e).

23 **"§ 108D-29. Contested case hearings on disputed managed care actions.**

24 **(a) Jurisdiction of OAH.** – The Office of Administrative Hearings does not have
25 jurisdiction over a dispute concerning a managed care action, except as expressly set forth in
26 this Chapter.

27 **(b) Exclusive Administrative Remedy.** – Notwithstanding any provision of State law or
28 rules to the contrary, this section is the exclusive method for an enrollee to contest a notice of
29 resolution issued by an LME/MCO. G.S. 108A-70.9A, 108A-70.9B, and 108A-70.9C do not
30 apply to enrollees contesting a managed care action.

31 **(c) Request for Contested Case Hearing.** – A request for an administrative hearing to
32 appeal a notice of resolution issued by an LME/MCO is a contested case subject to the
33 provisions of Article 3 of Chapter 150B of the General Statutes. An enrollee, or a provider
34 authorized in writing to act on behalf of an enrollee, has the right to file a request for appeal to
35 contest a notice of resolution as long as the enrollee or provider has exhausted the appeal
36 procedures described in G.S. 108D-27 or G.S. 108D-28.

37 **(d) Filing Procedure.** – An enrollee, or a provider authorized in writing to act on behalf
38 of an enrollee, may file a request for an appeal by sending an appeal request form that meets
39 the requirements of subsection (e) of this section to OAH and the affected LME/MCO by no
40 later than 30 days after the mailing date of the notice of resolution. A request for appeal is
41 deemed filed when a completed and signed appeal request form has been both submitted into
42 the care and custody of the chief hearings clerk of OAH and accepted by the chief hearings
43 clerk. Upon receipt of a timely filed appeal request form, information contained in the notice of
44 resolution is no longer confidential, and the LME/MCO shall immediately forward a copy of
45 the notice of resolution to OAH electronically. OAH may dispose of these records after one
46 year.

47 **(e) Appeal Request Form.** – In the same mailing as the notice of resolution, the
48 LME/MCO shall also provide the enrollee with an appeal request form for a contested case
49 hearing which shall be no more than one side of one page. The form shall include at least all of
50 the following:

- 1 (1) A statement that in order to request an appeal, the enrollee must send the
2 form by mail or fax to the address or fax number listed on the form by no
3 later than 30 days after the mailing date of the notice of resolution.
- 4 (2) The enrollee's name, address, telephone number, and Medicaid identification
5 number.
- 6 (3) A preprinted statement that indicates that the enrollee would like to appeal a
7 grievance disposition or a specific managed care action identified in the
8 notice of resolution.
- 9 (4) A statement informing the enrollee of the right to be represented at the
10 contested case hearing by a lawyer, a relative, a friend, or other
11 spokesperson.
- 12 (5) A space for the enrollee's signature and date.

13 (f) Continuation of Benefits. – An LME/MCO shall continue the enrollee's benefits
14 during the pendency of an appeal to the same extent required under 42 C.F.R. § 438.420.
15 Notwithstanding any other provision of State law, the administrative law judge does not have
16 the power to order and shall not order an LME/MCO to continue benefits in excess of what is
17 required by 42 C.F.R. § 438.420.

18 (g) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter
19 150B of the General Statutes, the chief administrative law judge of OAH may limit and
20 simplify the administrative hearing procedures that apply to contested case hearings conducted
21 pursuant to this section in order to complete these cases as expeditiously as possible. Any
22 simplified hearing procedures approved by the chief administrative law judge pursuant to this
23 subsection must comply with all of the following requirements:

- 24 (1) OAH shall schedule and hear cases by no later than 55 days after receipt of a
25 request for a contested case hearing.
- 26 (2) OAH shall conduct all contested case hearings telephonically or by video
27 technology with all parties, unless the enrollee requests that the hearing be
28 conducted in person before the administrative law judge. An in-person
29 hearing shall be conducted in Wake County unless the enrollee's
30 impairments limit travel. For enrollees with impairments that limit travel, an
31 in-person hearing shall be conducted in the enrollee's county of residence.
32 OAH shall provide written notice to the enrollee of the use of telephonic
33 hearings, hearings by video conference, and in-person hearings before the
34 administrative law judge, as well as written instructions on how to request a
35 hearing in the enrollee's county of residence.
- 36 (3) The administrative law judge assigned to hear the case shall consider and
37 rule on all prehearing motions prior to the scheduled date for a hearing on
38 the merits.
- 39 (4) Neither an enrollee nor an LME/MCO is required to be represented by an
40 attorney at a contested case hearing. For cases in which the enrollee is not
41 represented by an attorney, the administrative law judge assigned to hear the
42 case shall make reasonable efforts to assure a fair hearing and to maintain a
43 complete record of the hearing.
- 44 (5) The administrative law judge may allow brief extensions of the time limits
45 imposed in this section only for good cause shown and to ensure that the
46 record is complete. The administrative law judge shall only grant a
47 continuance of a hearing in accordance with rules adopted by OAH for good
48 cause shown and shall not grant a continuance on the day of a hearing,
49 except for good cause shown. If an enrollee fails to make an appearance at a
50 hearing that has been properly noticed by OAH by United States mail, OAH
51 shall immediately dismiss the case, unless the enrollee moves to show good

1 cause by no later than three business days after the date of dismissal. As
2 used in this section, "good cause shown" includes delays resulting from
3 untimely receipt of documentation needed to render a decision and other
4 unavoidable and unforeseen circumstances.

5 (6) OAH shall include information on at least all of the following in its notice of
6 hearing to an enrollee:

7 a. The enrollee's right to examine at a reasonable time before and
8 during the hearing the contents of the enrollee's case file and any
9 documents to be used by the LME/MCO in the hearing before the
10 administrative law judge.

11 b. The enrollee's right to an interpreter during the hearing process.

12 c. The circumstances in which a medical assessment may be obtained at
13 the Department's expense and made part of the record, including all
14 of the following:

15 1. A hearing involving medical issues, such as a diagnosis, an
16 examining physician's report, or a decision by a medical
17 review team.

18 2. A hearing in which the administrative law judge considers it
19 necessary to have a medical assessment other than the
20 medical assessment performed by an individual involved in
21 any previous level of review or decision making.

22 (h) Mediation. – Upon receipt of an appeal request form as provided by G.S. 108D-8(f)
23 or other clear request for a hearing by an enrollee, OAH shall immediately notify the Mediation
24 Network of North Carolina, which shall contact the recipient within five days to offer
25 mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be
26 completed within 25 days of submission of the request for appeal. Upon completion of the
27 mediation, the mediator shall inform OAH and the LME/MCO within 24 hours of the
28 resolution by facsimile or electronic messaging. If the parties have resolved matters in the
29 mediation, OAH shall dismiss the case. OAH shall not conduct a hearing of any contested case
30 involving a dispute of a managed care action until it has received notice from the mediator
31 assigned that either (i) the mediation was unsuccessful, (ii) the petitioner has rejected the offer
32 of mediation, or (iii) the petitioner has failed to appear at a scheduled mediation. Nothing in
33 this subsection shall restrict the right to a contested case hearing.

34 (i) Burden of Proof. – The enrollee has the burden of proof on all issues submitted to
35 OAH for a contested case hearing pursuant to this section and has the burden of going forward.
36 The administrative law judge shall not make any ruling on the preponderance of evidence until
37 the close of all evidence in the case.

38 (j) New Evidence. – The enrollee shall be permitted to submit evidence regardless of
39 whether it was obtained before or after the LME/MCO's managed care action and regardless of
40 whether the LME/MCO had an opportunity to consider the evidence in resolving the
41 LME/MCO level appeal. Upon the receipt of new evidence and at the request of the
42 LME/MCO, the administrative law judge shall continue the hearing for a minimum of 15 days
43 and a maximum of 30 days in order to allow the LME/MCO to review the evidence. Upon
44 reviewing the evidence, if the LME/MCO decides to reverse the managed care action taken
45 against the enrollee, it shall immediately inform the administrative law judge of its decision.

46 (k) Issue for Hearing. – For each managed care action, the administrative law judge
47 shall determine whether the LME/MCO substantially prejudiced the rights of the enrollee and
48 whether the LME/MCO, based upon evidence at the hearing:

49 (1) Exceeded its authority or jurisdiction.

50 (2) Acted erroneously.

51 (3) Failed to use proper procedure.

1 (4) Acted arbitrarily or capriciously.

2 (5) Failed to act as required by law or rule.

3 (l) To the extent that anything in this Part, Chapter 150B of the General Statutes, or any
4 rules or policies adopted pursuant to these Chapters is inconsistent with the Social Security Act
5 or 42 C.F.R. Part 438, Subpart F, federal law prevails and applies to the extent of the conflict.
6 All rules, rights, and procedures for contested case hearings concerning managed care actions
7 shall be construed so as to be consistent with federal law and shall provide the enrollee with no
8 lesser and no greater rights than those provided under federal law.

9 **"§ 108D-30. Notice of final decision and right to seek judicial review.**

10 The administrative law judge assigned to conduct a contested case hearing pursuant to
11 G.S. 108D-29 shall hear and decide the case without unnecessary delay. The judge shall
12 prepare a written decision that includes findings of fact and conclusions of law and send it to
13 the parties in accordance with G.S. 150B-37. The written decision shall notify the parties of the
14 final decision and of the right of the enrollee and the LME/MCO to seek judicial review of the
15 decision pursuant to Article 4 of Chapter 150B of the General Statutes."

16 **SECTION 2.** G.S. 108C-1 reads as rewritten:

17 **"§ 108C-1. Scope; applicability of this Chapter.**

18 This Chapter applies to providers enrolled in Medicaid or Health Choice. Except as
19 expressly provided by law, this Chapter does not apply to LME/MCOs, enrollees, applicants,
20 providers of emergency services, or network providers subject to Chapter 108D of the General
21 Statutes."

22 **SECTION 3.** G.S. 122C-3 is amended by adding a new subdivision to read:

23 "(20c) "Local management entity-managed care organization" or "LME/MCO"
24 means an LME that has been approved by the Department to operate a
25 managed care organization or prepaid inpatient health plan in accordance
26 with 42 C.F.R. Part 438."

27 **SECTION 4.** G.S. 122C-151.3 reads as rewritten:

28 **"§ 122C-151.3. Dispute with area authorities or county programs.**

29 (a) An area authority or county program shall establish written procedures for resolving
30 disputes over decisions of an area authority or county program that may be appealed to the
31 State MH/DD/SA Appeals Panel under G.S. 122C-151.4. The procedures shall be informal and
32 shall provide an opportunity for those who dispute the decision to present their position.

33 (b) This section does not apply to LME/MCOs, enrollees, applicants, providers of
34 emergency services, or network providers subject to Chapter 108D of the General Statutes."

35 **SECTION 5.** G.S. 122C-151.4(g) reads as rewritten:

36 "(g) This section does not apply to ~~providers of community support services who appeal~~
37 ~~directly to the Department of Health and Human Services under the Department's community~~
38 ~~support provider appeal process.~~LME/MCOs, enrollees, applicants, providers of emergency
39 services, or network providers subject to Chapter 108D of the General Statutes."

40 **SECTION 6.** This act becomes effective July 1, 2013.